

Exhibit 4

2020 WL 6130873 (D.D.C.) (Trial Motion, Memorandum and Affidavit)
United States District Court, District of Columbia.

UNITED STATES OF AMERICA,

v.

Michael T. FLYNN, Defendant.

No. 17-232-EGS.

September 24, 2020.

Third Supplement in Support of Agreed Dismissal

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On May 7, 2020, the Government moved to dismiss with prejudice the prosecution of General Flynn. ECF No. 198. Until this case is dismissed with prejudice, the Government has a continuing obligation to provide to the defense all evidence that is exculpatory of General Flynn, establishes misconduct by the Government in its many capacities that contributed to this wrongful prosecution, or otherwise is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963). The defense has a continuing obligation to make a record that mandates this dismissal— especially in view of this court's unprecedented procedures and position.

Late last night, the Government produced yet another tranche of documents—its fifth production of exculpatory evidence since April of 2020, and its third since filing its massive Motion to Dismiss. ECF Nos. 198, 231, 237. According to the Government's production correspondence: “The documents include handwritten notes of former Deputy Assistant Director Peter Strzok (23501 & 23503) and former Deputy Director Andrew McCabe (23502); and internal text messages between FBI analysts who worked on the Flynn matter (23504- 23516); ... additional text messages between former DAD Strzok and Lisa Page (23516-23540).” The 41 pages of additional evidence demonstrate (i) his innocence; (ii) the absence of any crime; (iii) government misconduct in the investigation of General Flynn; and (iv) continuing prosecutorial misconduct in the suppression of evidence favorable to the defense in violation of *Brady v. Maryland* and this Court's *Brady* order. ECF No. 20.

These documents provide information long known to the agents and others at the highest levels of the Department of Justice and the FBI; information long concealed by the Special Counsel and FBI. This evidence shows outrageous, deliberate misconduct by FBI and DOJ—playing games with the life of a national hero. It negates multiple essential elements required for the prosecution of a false statement offense and any “offense” even considered in relationship to Flynn Intel Group's review of open source information regarding Fethullah Gulen and the Muslim Brotherhood.

This remarkable new production shows that in August of 2016, the FBI analysts discussed the preference of some agents for a Clinton Presidency—a known quantity—“instead of a wild card like [T]rump.”

8/11/2016

19:30:05

[Text redacted in copy.]

doing all this election
research - i think some of
these guys want a clinton
presidency

8/11/2016	19:30:20	[Text redacted in copy.]	they seem to respect that they know what they are gonna get
8/11/2016	19:30:25	[Text redacted in copy.]	haha, really
8/11/2016	19:30:36	[Text redacted in copy.]	instead of a wild card like trump

In messages exchanged on the FBI's "Lync" messaging system in October of 2016, FBI employees exchanged messages about the "Crossfire Road Show," stating that they were "interested to see how this all plays out." They knew exactly how bad it was: "I'm tellying man, if this thing ever gets FOIA'd, there are going to be some tough questions asked."

10/13/2016	17:02:04	[Text redacted in copy.]	haha, so now [Text redacted in copy.] is trying to work a trip to South Africa
10/13/2016	17:02:16	[Text redacted in copy.]	the Crossfire Road show
10/13/2016	17:03:20	[Text redacted in copy.]	I'm interested to see how this all plays out.
10/13/2016	18:50:29	[Text redacted in copy.]	I'm tellying man, if this thing ever gets FOIA'd, there are going to be some tough questions asked
10/13/2016	18:51:02	[Text redacted in copy.]	and a great deal of those will be related to Brian having a scope way outside the boundries of logic
10/13/2016	18:51:07	[Text redacted in copy.]	[Text redacted in copy.] is one of the worst offenders of the rabbit holes and conspiracy theories
10/13/2016	18:51:47	[Text redacted in copy.]	This guy traveled with that guy, who put down 3rd guy as his visa sponsor. 3rd guy lives near a navy base, therefore.....

Notably, the "investigation" of General Flynn was first closed by November 8, 2016. The FBI agents write: "he said shut down Razor" and "so glad they're closing Razor." However [redacted] "was silent though, so who knows what he will want." Was that Andy [McCabe]?¹

¹ General Flynn has a Sixth Amendment right to a public exoneration regarding the proceedings against him, and the American people have a right to know the truth about the nefarious conduct and the people who committed it. The defense objects to any redactions and demands that the Government file these documents unredacted on the public record.

11/8/2016	17:38:33	[Text redacted in copy.]	I went an joined the ops pow wow.....looks like next friday is the end
11/8/2016	17:38:44	[Text redacted in copy.]	yeah
11/8/2016	17:39:07	[Text redacted in copy.]	we have some loose ends to tie up, and we all need to meet to discuss what to do with each case (he said shut down Razor)
11/8/2016	17:39:28	[Text redacted in copy.]	[Text redacted in copy.] was silent though, so who knows what he will want
11/8/2016	17:42:19	[Text redacted in copy.]	so glad they're closing Razor

Date	UTC	Conversation Participants	Content Text
11/21/2016	20:05:06	[Text redacted in copy.]	that the decision to nsl finances for razor bought him time
11/21/2016	20:05:19	[Text redacted in copy.]	speaking of - are these NSLs immediate? If not lets do that

FBI employees noted “that the decision to nsl [national security letter] finances for razor bought him time.” This shows their recognition that the issuance or request for national security letters for General Flynn's financial information was a ruse to get more time to keep the “investigation” against him open. These Stalinist tactics mandate immediate dismissal of this case.

Analysts recognized by December 5, 2016, it was not even a “logical investigative step” to seek General Flynn's financial records at that time and that “this is a nightmare.”

12/5/2016	15:03:35	[Text redacted in copy.]	what do we expect to get from an nsl
12/5/2016	15:03:46	[Text redacted in copy.]	he sat next to putin in dec
12/5/2016	15:03:51	[Text redacted in copy.]	their relationship is overt
12/5/2016	15:04:11	[Text redacted in copy.]	i did think at the time and i do now it was thr right call to do them
12/5/2016	15:04:17	[Text redacted in copy.]	Agreed. We didn't find anything else from the investigation about him.
12/5/2016	15:04:18	[Text redacted in copy.]	its a logical investigative step

12/5/2016	15:04:28	[Text redacted in copy.]	but now it is not
12/5/2016	15:04:55	[Text redacted in copy.]	we put out traces, tripwires to community and nothing
12/5/2016	15:04:58	[Text redacted in copy.]	bingo
12/5/2016	15:05:08	[Text redacted in copy.]	so whats an nsl going to do - no content
12/5/2016	15:05:29	[Text redacted in copy.]	anyways - hope you had a good thanksgiving
12/5/2016	15:05:38	[Text redacted in copy.]	hahah this is a nightmare

On that same day, analysts discussed NSLs as a pretext to buy time that also increased the risk of leaks. They also noted it was a topic that “makes no sense” since the argument was made back in August. **“If we’re concerned about sensitivity/leaks, might not want to send NSLs that we don’t really intend on using.”** “Exactly that makes no sense. We’d have to read in more people/field offices.” “Again—the argument you guys made to me in [A]ug[ust].”

Date	UTC	Conversation Participants	Content Text
12/5/2016	15:01:00	[Text redacted in copy.]	then there were discussions on whats done/outstanding on razor
12/5/2016	15:01:13	[Text redacted in copy.]	i tell AD - waiting on 2 nsls result
12/5/2016	15:01:22	[Text redacted in copy.]	[Text redacted in copy.] calls [Text redacted in copy.] dn learns they didnt send
12/5/2016	15:01:24	[Text redacted in copy.]	f
12/5/2016	15:01:27	[Text redacted in copy.]	twas a show
12/5/2016	15:01:44	[Text redacted in copy.]	so do we close without nsls?
12/5/2016	15:01:51	[Text redacted in copy.]	do we send nsls now?
12/5/2016	15:01:53	[Text redacted in copy.]	ugh taht's fucking stupid
12/5/2016	15:01:59	[Text redacted in copy.]	what do we really expect to get
12/5/2016	15:02:02	[Text redacted in copy.]	yep
12/5/2016	15:02:16	[Text redacted in copy.]	and im traveling with [Text redacted in copy.]
12/5/2016	15:02:17	[Text redacted in copy.]	If we're concerned about sensitivity/leaks, might not

			want to send NSLs that we don't really intend on using.
12/5/2016	15:02:24	[Text redacted in copy.]	yeah
12/5/2016	15:02:31	[Text redacted in copy.]	thats what i want to say
12/5/2016	15:02:55	[Text redacted in copy.]	If we're working to close down the cases, I'm not sure what NSL results would do to help
12/5/2016	15:02:58	[Text redacted in copy.]	i mean i cant get di people but we have some mope in jacksonville, miami, newark running nsls and fisa 2ndaries
12/5/2016	15:03:03	[Text redacted in copy.]	Other than "check the box"
12/5/2016	15:03:11	[Text redacted in copy.]	yeah
12/5/2016	15:03:18	[Text redacted in copy.]	exactly that makes no sense, we'd have to read in more people/field offices
12/5/2016	15:03:28	[Text redacted in copy.]	again - the argumant you guys made to me in aug

FBI employees discussed the January 5, 2017, briefing of Obama: "What's the word on how O's briefing went"? asked one employee, to which the other replied, "Don't know but people here are scrambling for info to support certain things and it's a mad house." "Trump was right. Still not put together... why do we do this to ourselves. What is wrong with these people."

Date	UTC	Conversation Participants	Content Text
1/5/2017	14:51:02	[Text redacted in copy.]	So razor is going to stay open[Text redacted in copy.]?
1/5/2017	14:51:13	[Text redacted in copy.]	yep
1/5/2017	14:51:22	[Text redacted in copy.]	crimes report being drafted
1/5/2017	14:51:28	[Text redacted in copy.]	F
1/5/2017	18:02:04	[Text redacted in copy.]	what's the word on how O's briefing went
1/5/2017	18:03:37	[Text redacted in copy.]	who is O
1/5/2017	18:04:19	[Text redacted in copy.]	obama
1/5/2017	18:04:25	[Text redacted in copy.]	our president
1/5/2017	18:04:45	[Text redacted in copy.]	do you like justin beiber

1/5/2017	18:07:59	[Text redacted in copy.]	Dont know but people here are scrambling for info to support certain things and its a mad house
1/5/2017	18:12:35	[Text redacted in copy.]	jesus
1/5/2017	18:13:03	[Text redacted in copy.]	trump was right, still not put together....why do we do this to ourselves, what is wrong with these people

Five days later, on January 10, 2017, **FBI analysts knew it was so bad that they “all went and purchased professional liability insurance.”** The same employees worried that **“the whole thing is pretty ugly...we shall see how things pan out”** and “[t]he concern when we got it was that there was a big leak at DOJ and the NYT among others was going to do a piece.” Further, “the new AG might have some questions...then yada yada yada...we all get screwed.” Exhibit A (emphasis added).

Date	UTC	Conversation Participants	Content Text
1/10/2017	19:57:10	[Text redacted in copy.]	we all went and purchased professional liability insurance
1/10/2017	19:57:20	[Text redacted in copy.]	holy crap
1/10/2017	19:57:23	[Text redacted in copy.]	all the analysts too?
1/10/2017	19:57:25	[Text redacted in copy.]	yep
1/10/2017	19:57:33	[Text redacted in copy.]	do they help reimburse you?
1/10/2017	19:57:36	[Text redacted in copy.]	all the folks at the Agency as well
1/10/2017	19:57:45	[Text redacted in copy.]	that really, really sucks
1/10/2017	19:57:57	[Text redacted in copy.]	the BU will pay half, but only after you have been in the system for 6 months
1/10/2017	19:58:12	[Text redacted in copy.]	yeah....the whole thing is pretty ugly....we shall see how things pan out.
1/10/2017	19:59:08	[Text redacted in copy.]	can i ask who are the most likely litigators?
1/10/2017	19:59:20	[Text redacted in copy.]	as far as potentially suing y'all
1/10/2017	20:03:31	[Text redacted in copy.]	haha, who knows....I think he concern when we got it was that there was a big leak at DOJ and the NYT among

			others was going to do a piece
1/10/2017	20:04:08	[Text redacted in copy.]	the thought was if that piece comes out, and Jan 20th comes around...the new AG might have some questions....then yada yada yada...we all get screwed
1/10/2017	20:04:49	[Text redacted in copy.]	don't think it will happen now, but just in case....this could be a very very unpredictable 4 years
1/10/2017	20:06:20	[Text redacted in copy.]	omg

On January 13, 2017, FBI employees messaged that “someone leaked the Flynn calls with Kislyak to the WSJ.” In a response reeking with sarcasm, an FBI employee messaged “I'm so sorry to hear that. I'll resume my duties as Chief Morale Officer and rectify that.”

Date	UTC	Conversation Participants	Content Text
1/13/2017	14:32:41	[Text redacted in copy.]	FYI - someone leaked the Flynn calls with Kislyak to the WSJ.
1/13/2017	14:32:50	[Text redacted in copy.]	I'm sorry to hear that. I'll resume my duties as Chief Morale Officer and rectify that.
1/13/2017	14:32:52	[Text redacted in copy.]	[Text redacted in copy.]
1/13/2017	14:33:16	[Text redacted in copy.]	Oh shit. Did that go out yet, or is that a soft approach from WSJ at this time?
1/13/2017	14:33:31	[Text redacted in copy.]	Published this morning by Ignatius.
1/13/2017	14:33:35	[Text redacted in copy.]	It's got to be someone on the staff.
1/13/2017	14:33:38	[Text redacted in copy.]	PDB staff.
1/13/2017	14:33:52	[Text redacted in copy.]	Or WH seniors.

Newly produced notes of Andrew McCabe show that at 5:15 p.m. on May 10, 2017, McCabe briefed the Senate Select Committee on Intelligence. They were trying very hard to pin something on General Flynn. Exhibit B.

“Flynn –
• Open: nothing

- Closed: everything
- Blackmail: theoretically possible, not the strongest theory.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Newly produced notes of Peter Strzok show: Strzok met with Bruce Schwartz, Lisa, and George at DOJ on March 28, 2017, where he noted Flynn Intel Group “satisfied the registration obligation” and “no evidence of any willfulness.” Nonetheless, “Bruce” decided to issue subpoenas to Flynn Intel Group “and more.” Exhibits C, D.

The new Strzok-Page text messages show that Strzok played games with the FBI Sentinel serialization system and entry of 302s, Strzok and Page were pulling talking points from a *Lawfare* article, and “F” in Pamela Brown knows there were two phone call memos.” Further, these text message reinforce how zealously Strzok and Page were working to oppose Trump's election and subvert the peaceful transfer of power. Exhibit E. The following are a sample of some of the conversations reflected in Exhibit E.

2016-07-31 23:10:23, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	97F-HQ-25126529, Full, opened 07/31/2016.\n\nI'm certain I fed up serialization somehow but we'll sort that out later
2016-07-31 23:11:30, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	And damn this feels momentous. Because this matters. The other one
2016-07-31 23:11:30, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	did, too, but that was to ensure we didn't F something up. This mat
2016-07-31 23:11:30, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	ters because this MATTERS. So super glad to be on this voyage wit
2016-07-31 23:11:31, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	h you. <<image not displayable>>
2016-07-31 23:12:06, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	Roger thanks
2016-07-31 23:13:52, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	Thanks for doing that...
2016-07-31 23:14:59, Sun	[Text redacted in copy.]	INBOX	[Text redacted in copy.]	Well wait a minute. Sentinel now shows 97F-HQ-2063661. Go with this one

2016-07-31 23:19:58, Sun	[Text redacted in copy.]	OUTBOX [Text redacted in copy.]	I know. Me too. <<image not displayable>>
2016-10-20 1:15:42, Thu	INBOX	[Text redacted in copy.]	I am riled up. Trump is a fucking idiot, is unable to provide a coherent answer.
2016-10-20 1:16:27, Thu	OUTBOX	[Text redacted in copy.]	Please, I honestly don't want to know.
2016-10-20 1:22:34, Thu	INBOX	[Text redacted in copy.]	I CAN'T PULL AWAY, WHAT THE FUCK HAPPENED TO OUR COUNTRY, LIS?![Text redacted in copy.]!?!]
2016-10-20 1:24:18, Thu	OUTBOX	[Text redacted in copy.]	don't know. But we'll get it back. We're America. We rock.
		[Text redacted in copy.]	
2016-11-02 0:37:06, Wed	INBOX	[Text redacted in copy.]	Like I said, see [Text redacted in copy.] and ny convo....
2016-11-02 0:45:42, Wed	INBOX	[Text redacted in copy.]	This response, from [Text redacted in copy.] ...and considering we haven't shared any facts, those certainly aren't factoring into decisionmaking. We should essentially have
2016-11-02 0:45:42, Wed	INBOX	[Text redacted in copy.]	no reason for contact with NYO going forward in this
2016-11-02 0:46:15, Wed	OUTBOX	[Text redacted in copy.]	I know Which is what I tried to impose
2016-11-02 0:47:01, Wed	OUTBOX	[Text redacted in copy.]	God, this makes me very very angry. I honestly think I should bow out rather than find out things, be unable to tell Andy, and powerless to stop them.
2016-11-02 0:48:22, Wed	INBOX	[Text redacted in copy.]	No. Need you on the inside now more than ever. Truly. And no bs, your country needs you now. We are going to have to be very wise about all of this.
2016-11-02 0:49:00, Wed	INBOX	[Text redacted in copy.]	The only thing wrong in your statement ii your powerlessness
2016-11-02 0:49:08, Wed	OUTBOX	[Text redacted in copy.]	I am going to have to use Jim Baker a lot to get to the D. But I don't trust that he can convey details accurately

2016-11-02 0:49:25, Wed	OUTBOX	[Text redacted in copy.]	I'm not sure I agree with you there
2016-11-02 0:50:12, Wed	INBOX	[Text redacted in copy.]	Not just JB. And this is a finite thing. I want to be done before the inauguration.
2017-02-14 20:19:75, Tue	INBOX	[Text redacted in copy.]	You saw nyt has us interviewing F
2017-02-14 20:19:38, Tue	OUTBOX	[Text redacted in copy.]	Yes. Just flagged for dd and d.
2017-02-14 20:19:44, Tue	OUTBOX	[Text redacted in copy.]	Will explain why later.
2017-02-14 20:20:06, Tue	INBOX	[Text redacted in copy.]	We need to talk Mike was talking to them
2017-02-14 20:20:50, Tue	OUTBOX	[Text redacted in copy.]	Oh really.
2017-02-14 20:22:59, Tue	INBOX	[Text redacted in copy.]	Done
2017-02-16 2:18:10, Thu	OUTBOX	[Text redacted in copy.]	Has typh. 302 been finalized?
2017-02-16 2:21:46, Thu	INBOX	[Text redacted in copy.]	No, we recorded it so it stands as it is (302 will simply say it was recorded). And there are multiple. Why? (And do you mean razr?
2017-02-16 2:21:59, Thu	INBOX	[Text redacted in copy.]	And sent, elsewhere
2017-02-16 2:23:22, Thu	OUTBOX	[Text redacted in copy.]	Ah. No, meant what I asked.
2017-02-16 2:24:45, Thu	OUTBOX	[Text redacted in copy.]	Note the bcc.
2017-02-16 2:24:59, Thu	INBOX	[Text redacted in copy.]	K
2017-05-18 11:21:01, Thu	INBOX	[Text redacted in copy.]	I disagree with the Gaeta decision, though I know that counts for nothing. It won't end with him. It will have a chilling effect on others It won't eng
2017-05-18 11:21:01, Thu	INBOX	[Text redacted in copy.]	ender any of the happylovetimes goodwill with staff that seem to be oozing from burr and warner. I hope we're at least going to have him cone back here
2017-05-18 11:21:01, Thu	INBOX	[Text redacted in copy.]	to prep and have[Text redacted in copy.]others with him, rather than enabling a needless Rome boondoggle as well?

2017-05-18 11:28:44, Thu	INBOX	[Text redacted in copy.]	Lisa, I probably wouldn't. But we had a lot of discussion in exactly the same setting and context. Nothing changed They MEAN that earnestness. But they'r
2017-05-18 11:28:44, Thu	INBOX	[Text redacted in copy.]	e Senators. And this is their game, their rules. We assume its ours, but its not. Andy is the Director and he decides. Period. But undertand this isn't"
2017-05-18 11:28:44, Thu	INBOX	[Text redacted in copy.]	Monday morning quarterbacking" - I felt strongly about the play well in advance of the game. All these people we're about to give them access to aren't
2017-05-18 11:28:44, Thu	INBOX	[Text redacted in copy.]	as polished and smart and thoughtful as Andy

The Government provided copies of the production with all necessary redactions for public dissemination. These documents evidence stunning government misconduct that mandates the immediate dismissal of this wrongful prosecution. The Government's redacted production of last evening, September 23, 2020, is attached hereto as Exhibits A-E.

CONCLUSION

There was no case against General Flynn. There was no crime. The FBI and the prosecutors knew that. This American hero and his entire family have suffered for four years from public abuse, slander, libel, and all means of defamation at the hands of the very government he pledged his life to defend.

For these reasons and all those previously briefed, the Government's Motion to Dismiss should now be granted with prejudice *instantner* for multiple violations of *Brady* and the wrongful prosecution of General Flynn when the agents and prosecutors knew there was no crime. This hideous abuse of power and travesty of justice has only been exacerbated by the unprecedented and baseless rulings of this court, and it should not continue another day.

Dated: September 24, 2020

Respectfully submitted,

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